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D2872CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	: 09/730,689	Confirmation No. 9222
Appellant	: Bersiek	
Filed	: December 6, 2000	
Title	: RACK MOUNTABLE POWER DISTRIBUTION APPARATUS	
TC/A.U.	: 2800/2836	
Examiner	: Rios Cuevas, R.J.	
Docket No.	: D2872-CIP	
Customer No.	: 33197	

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail with sufficient postage in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: SEPTEMBER 8, 2004

Frank J. Uxa, atty
9/8/04

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Dear Sir:

Transmitted herewith is APPELLANT'S BRIEF in the above-identified application, in triplicate. A check in the amount of $165.00 is enclosed to cover the fee required for the filing of this APPELLANT'S BRIEF. Copies in triplicate of this letter are enclosed.

Respectfully submitted,

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APPELLANT'S BRIEF (37 C.F.R. 1.192)

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STATUTE

35 USC 103. Conditions for patentability; non-obvious subject matter

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

(b)

(1) Notwithstanding subsection (a), and upon timely election by the appellant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if-

(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

(2) A patent issued on a process under paragraph (1)-

(A) shall also contain the claims to the composition of matter used in or made by that process, or

(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

(3) For purposes of paragraph (1), the term "biotechnological process" means-

(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to-

(i) express an exogenous nucleotide sequence,

(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

(iii) express a specific physiological characteristic not naturally associated with said organism;

(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

(C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

TABLE OF CASES

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APPELLANT'S BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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Alexandria, VA 22313-1450

Dear Sir:

This brief is in furtherance of a Notice of Appeal filed July 16, 2004.

I. REAL PARTY IN INTEREST

The above-identified application has been assigned to S&S Power Engineering. Therefore, S&S Power Engineering is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

Neither this appeal nor the above-identified application is related to any other appeal or pending interference.

III. STATUS OF CLAIMS

Claim 11 has been cancelled. Claims 1-10 and 12-25 are currently pending. Therefore, the claims on appeal are claims 1-10 and 12-25, a copy of which is included herein as Appendix A.

IV. STATUS OF AMENDMENTS

Claims 1-25 were finally rejected in an Examiner's Communication mailed November 28, 2003.

An AMENDMENT UNDER RULE 116 was filed on February 19, 2004. The claims remaining after that AMENDMENT are claims 1-10 and 12-25.

No further amendment has been filed subsequent to that AMENDMENT.

V. SUMMARY OF INVENTION

The present claims are directed to power distribution units (claims 1-10 and 12-20) or systems which include power distribution units (claims 21-25). Each of the power distribution units recited in the present claims includes a housing including no internal battery.

In addition, each of the power distribution units recited in the present claims include a plurality of hard-wired output connections and at least one plug-in receptacle, or a plurality of plug-in receptacles. Each of the hard-wired output connections is structured and adapted to be hard-wired to a piece of equipment to provide electrical power. Each of the plug-in receptacles is adapted to receive an equipment plug to provide electrical power.

The present power distribution units are structured to provide a substantial degree of flexibility and versatility, as well as advantageously being comprised so that the housing of the unit is rack-mountable. Each of the present power distribution units comprises a plurality of hard-wired output connections and at least one plug-in receptacle, or a plurality of such plug-in receptacles. Thus, each of the present power distribution units is advantageously couplable to a wide variety of different types of equipment.

In addition, the housings of the presently claimed power distribution units are recited as including no internal battery. Thus, the present power distribution units are not uninterruptible power supplies (UPSs). In short, the above-noted recitation in each of the present claims clearly, directly and expressly distinguishes the presently claimed power distribution units from uninterruptible power supplies (UPSs) which, by definition, include a battery.

VI. ISSUES

The legal issues on appeal are whether

(i) claims 1, 2 and 4 to 15 are patentable under 35 U.S.C. 103(a) over Baker et al in view of Powerware 5140;

(ii) claim 3 is patentable under 35 U.S.C. 103(a) over Baker et al in view of Powerware 5140 and further in view of Kozlowski et al; and

(iii) claims 16 to 24 are patentable under 35 U.S.C. 103(a) over Baker et al in view of Powerware 5140 and Domigan.

Under Graham et al v. John Deere Co. et al, 148 USPQ 459 (U.S. Supreme Ct. 1966), the factual issues to be determined regarding these legal issues are as follows:

1. The scope and teachings of the references.
2. The extent of the differences between the present invention and the teachings of the references.

VII. GROUPING OF CLAIMS

With respect to the grounds of rejection, the claims on appeal do not stand or fall together.

VIII. ARGUMENT

A. Scope and Teachings of References

(i) Baker et al.

Baker et al discloses a power distribution unit including a housing having no internal battery. Baker et al discloses that the power distribution unit includes a plurality of plug-in receptacles.

Baker et al does not disclose, teach or suggest the present invention. For example, Baker et al does not disclose, teach or even suggest a power distribution unit including an output connection structured and adapted to be hard-wired to a piece of electric equipment, let alone a plurality of such hard-wired output connections as recited in the present claims.

(ii) Powerware 5140

Powerware 5140 discloses uninterruptible power supplies (UPSs), which include batteries. Importantly, the Powerware 5140 User's Guide itself makes absolutely clear the distinction between an uninterruptible power supply (UPS), which includes its own internal power supply (i.e., a battery) and a power distribution unit (such as shown in Figure 15 of the User's Guide). As is typical of a conventional power distribution unit, the power distribution unit shown in the Powerware 5140 guide includes no battery and includes only a plurality of plug-in receptacles with no hard-wire output connections.

It is also noted that the power distribution unit of Figure 15 of the User's Guide appears remarkably similar to the system shown in Baker et al and appears to have two plug-in receptacles but no hard-wired outlet connection.

(iii) Kozlowski et al

Kozlowski et al discloses a power distribution unit comprising front and back doors

(iv) Domigan

Domigan teaches an electrical power distribution unit comprising a plurality of interconnected power distribution units.

B. Errors in rejections

The Examiner improperly relies on Powerware 5140 to supply the deficiencies apparent in the teachings of Baker et al. Appellant submits that a person of ordinary skill in the art would not be motivated to combine the teachings of Baker et al. with the teachings of Powerware 5140. Appellant submits that the references teach away from the present invention, and therefore, a person of ordinary skill in the art would not be motivated to combine the references. Therefore, appellant submits that the present claims are unobvious from and patentable over the prior art under 35 U.S.C. § 103.

C. The present claims are unobvious

Appellant has submitted evidence regarding the definition of an uninterruptible power supply (UPS), taken from a government web page having address http:// www.bldrdoc.gov/fs-1037/dir-039/_5702.htm, and has requested the Examiner to consider that definition of an uninterruptible power supply (UPS). A copy of that definition is submitted herewith as Appendix B.

Appellant therefore submits it is well known that an UPS is a device which includes one or more batteries to guarantee continuous power provided to equipment even if a main source of power is interrupted.

In addition, the differences and distinctions between the

power distribution units of Baker et al and the UPSs of Powerware 5140 are so clear and substantial that one of ordinary skill in the art would find no motivation to combine the teachings of these references for any purpose, let alone for the purpose of making obvious the present invention.

Such combination of Baker et al and Powerware 5140 would require a complete dismantling, disassembling, and reconfiguring to make the UPS of Powerware 5140 into a power distribution system having no internal battery. Such dismantling, disassembling and reconfiguring would have to be undertaken in spite of the absolutely clear disclosure by the Powerware 5140 User's Guide that a UPS including a battery is different and distinct from a power distribution unit which, like appellant's invention, includes no battery. In effect, the prior art is clear beyond doubt that there is no basis for combining teachings regarding different and distinct apparatus to somehow arrive at appellant's power distribution systems. This is particularly true since the device identified by the Powerware 5140 User's Guide as a power distribution system (Figure 15) is remarkably similar to the power distribution system disclosed by Baker et al. Both references disclose the same power distribution system which is not even suggestive of appellant's power distribution system. The fact is the only power distribution system which can reasonably be derived from the references is the deficient power distribution system disclosed by both references.

Moreover, even if such complete dismantling, disassemblying and reconfiguring were to be erroneously undertaken, the dismantled disassembled/reconfigured system of Powerware 5140 would not be functional as an UPS without a battery. Thus, the Powerware 5140 system cannot be modified to be structured to have no battery and still have a plurality of hard-wired output connections and one or more plug-in receptacles. Appellant submits that persons of

ordinary skill in the art would find no basis or motivation in the teachings of Baker et al and Powerware 5140 for even considering combining the teachings of Baker et al and Powerware 5140, let alone actually succeeding in doing so and obtaining the power distribution units of the present invention.

In addition to necessarily including a battery, the UPS of Powerware 5140 includes only a single hard-wired output connection and not a plurality of such hard-wired output connections, such as claimed in all of the present claims. This deficiency of Powerware 5140 is particularly important since the primary reference, Baker et al discloses only systems which include no hard-wired output connections.

Appellant submits that the combination of references actually **teaches away** from the present invention. It is well established that a reference must be interpreted as a whole, and cannot be picked apart to deprecate an invention (*In re Fine*, 837 F.2d 1071, 1075, (Fed. Cir. 1988)). "As a general rule, references that teach away cannot serve to create a prima facie case of obviousness." (*McGinley v. Franklin Sports, Inc.* CAFC 8/21/01 citing *In re Gurley*, 31 USPQ2d 1131, (Fed. Cir. 1994)). Appellant submits that Powerware 5140 teaches away from the present power distribution units since the power distribution unit of Powerware 5140 (FIG. 15) includes no hard-wire output connections, and therefore, Powerware 5140 cannot be used to create a *prima facie* case of obviousness under 35 U.S.C. § 103.

In summary, even if the Examiner were to somehow succeed in erroneously combining the power distribution unit of Baker et al with the uninterruptible power supply of Powerware 5140, such combination would not yield the presently claimed invention. The uninterruptible power supply of Powerware 5140 includes only a single hard-wired output connection, whereas the presently claimed power distribution units comprise a plurality of hard-wired output

connections (as well as at least one plug-in receptacle outlet connection). As noted above, and as acknowledged by the Examiner, the power distribution unit of Baker et al includes no hard-wired output connections.

In contrast, the present claims require a power distribution unit having a housing including no battery, a plurality of hard-wired output connections, and at least one, or a plurality of, plug-in receptacle output connections.

Powerware 5140 clearly, directly and expressly distinguishes uninterruptible power supplies (UPSs) from power distribution units. Appellant, by reciting in the present claims that the housing includes no internal battery, makes clear that the present claims are directed to power distribution units and not to UPSs.

If any thing, the power distribution unit set forth in Figure 15 of the Powerware 5140 User's Guide might be used in combination with the power distribution unit of Baker et al to modify the Baker et al unit. However, such combined unit includes not even one hard-wired output connection, let alone a plurality of hard-wired output connections, as recited in the present claims.

Simply put, the Examiner has no basis in fact whatsoever for combining the battery-containing uninterruptible power supply (UPS) of Powerware 5140 with the power distribution unit of Baker et al for the purpose of making obvious the present invention.

Appellant submits that the rejection is simply not properly, or even reasonably, based. To a large extent, the argument presented hereinabove is the same as that provided in the last Office Action response. The Examiner totally ignored this argument and repeated substantially verbatim his prior position. Thus, the Examiner has failed to respond to appellant's argument, let alone even attempting to come to grips with the deficiencies in the references, which are clear beyond doubt.

In view of the above, appellant submits that the present

claims, and in particular claims 1, 2 and 4 to 15, are unobvious from and patentable over Baker et al in view of Powerware 5140.

Neither Kozlowski et al nor Domigan, alone or in any combination, supplies the deficiencies apparent in the teachings of Baker et al and Powerware 5140. In particular, the fact that Kozlowski et al discloses a power distribution unit comprising front and back doors does not, even together with the deficient teachings of Baker et al and Powerware 5140, make obvious the present claims.

Further, the fact that Domigan teaches an electrical power distribution unit comprising a plurality of interconnected power distribution units does not, even in combination with the deficient teachings of Baker et al and Powerware 5140, make obvious the present claims.

In view of the above, appellant submits that all of the present claims, that is claims 1 to 10 and 12 to 25 are unobvious from and patentable over Baker et al, Powerware 5140, Kozlowski et al and Domigan, taken alone or in any combination, under 35 U.S.C. 103(a).

Each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art, taken singly or in any combination discloses the present power distribution unit and systems including the additional feature or features recited in any of the present dependent claims. Therefore, appellant submits that each of the present claims is separately patentable over the prior art.

IX. CONCLUSION

In conclusion, appellant has shown the present claims are unobvious from and patentable over the prior under 35 U.S.C. 103(a). Therefore, appellant respectfully requests this Honorable Board to reverse the Examiner's rejections and hold claims 1-10 and 12-25 allowable.

Respectfully submitted,

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APPENDIX A

CLAIMS ON APPEAL

1. An electrical power distribution unit comprising:

a housing having no internal battery;

an electrical power input assembly located substantially in the housing of the power distribution unit and adapted to be electrically connected to an electrical power supply; and

a plurality of electrical power output assemblies electrically connected to the input assembly, and adapted to receive electrical power from the input assembly, the plurality of electrical power output assemblies including a plurality of output connections, each output connection structured and adapted to be hard-wired to a piece of equipment to provide electrical power and a plurality of receptacles, each receptacle adapted to receive an equipment plug to provide electrical power.

2. The power distribution unit of claim 1 wherein the housing is rack mountable.

3. The power distribution unit of claim 1 wherein the housing includes a front access door and a back access door.

4. The power distribution unit of claim 1 which further comprises a meter located within the housing and adapted to monitor at least one property of electrical power passing through the input assembly.

5. The power distribution unit of claim 1 which further comprises a transformer adapted to be in electrical communication with both the electrical power supply and the input assembly.

6. The power distribution unit of claim 1 wherein the input assembly is adapted to be electrically connected to a single phase electrical power supply or to a three phase electrical power supply.

7. The power distribution unit of claim 1 wherein the input assembly is adapted to be electrically connected to a single phase electrical power supply.

8. The power distribution unit of claim 1 wherein each of the output assemblies includes a different circuit breaker.

9. The power distribution unit of claim 1 wherein the plurality of electrical power output assemblies includes a plurality of differently configured receptacles for accommodating differently configured equipment plugs.

10. The power distribution unit of claim 1 further comprising a circuit panel and wherein the plurality of electrical output assemblies are mounted in the circuit panel.

11. (Canceled)

12. The power distribution unit of claim 1 wherein each of the receptacles is differently configured for accommodating differently configured equipment plugs.

13. The power distribution unit of claim 1 wherein the plurality of output connections comprise at least about 8 output connections.

14. The power distribution unit of claim 1 wherein the

plurality of receptacles comprises at least about 8 receptacles.

15. The power distribution unit of claim 1 which further comprises a switch structured and positioned to alternately connect and disconnect one of two or more electrical power supplies to the electrical power input assembly.

16. An electrical power distribution unit comprising:

a rack mountable housing having no internal battery;

an electrical power input assembly located substantially in the housing of the power distribution unit and adapted to be electrically connected to an electrical power supply; and

a plurality of electrical power output assemblies located substantially in the housing, electrically connected to the input assembly, and adapted to receive electrical power from the input assembly, the plurality of electrical power output assemblies including a plurality of output connections, each output connection structured and adapted to be hard-wired to a piece of equipment to provide electrical power and at least one receptacle structured to receive an equipment plug to provide electrical power.

17. The power distribution unit of claim 16 wherein the housing is adapted to be mounted on a 19 inch or 23 inch rack.

18. The power distribution unit of claim 16 which further comprises a meter located within the housing and adapted to monitor at least one property of electrical power passing through the input assembly.

19. The power distribution unit of claim 16 wherein each of the output assemblies includes a different circuit breaker.

20. The power distribution unit of claim 16 which further comprises a switch structured and positioned to alternately connect and disconnect one of two or more electrical power supplies to the electrical power input assembly.

21. An electrical power distribution system comprising:

a plurality of electrical power distribution units, each electrical power distribution unit being adapted to be electrically connected with at least one of the other electrical power distribution units, each of the electrical power distribution units comprising:

a housing having no internal battery;

an electrical power input assembly located substantially in the housing and adapted to be electrically connected to an electrical power supply; and

a plurality of electrical power output assemblies located substantially in the housing, electrically connected to the input assembly, and adapted to receive electrical power from the input assembly, the plurality of electrical power output assemblies including a plurality of output connections, each output connection structured and adapted to be hard-wired to a piece of equipment to provide electrical power and a plurality of receptacles, each receptacle structured and adapted to receive an equipment plug and to provide electrical power.

22. The system of claim 21 wherein each of the housings is rack mountable.

23. The system of claim 21 wherein each of the electrical power distribution units further comprises a meter disposed within the housing and adapted to monitor at least one property of electrical power passing through the input assembly.

24. The system of claim 21 which further comprises a switch structured and positioned to alternately connect and disconnect one of two or more electrical power supplies to the electrical power input assembly of one of the units.

25. The power distribution unit of claim 1, wherein the plurality of electrical power output assemblies are located substantially in the housing.

uninterruptible power supply (UPS)

uninterruptible power supply (UPS): A device that is inserted between a primary **power source**, such as a commercial utility, and the primary **power** input of equipment to be protected, *e.g.*, a computer system, for the purpose of eliminating the effects of transient anomalies or temporary outages. *Note 1:* An UPS consists of an inverter, usually electronic, that is powered by a battery that is kept trickle-charged by rectified ac from the incoming **power** line fed by the utility. In the event of an interruption, the battery takes over without the loss of even a fraction of a cycle in the acoutput of the UPS. The battery also provides protection against transients. The duration of the longest outage for which protection is ensured depends on the battery capacity, and to a certain degree, on the rate at which the battery is drained. *Note 2:* An UPS should not be confused with a standby generator, which may not provide protection from a momentary**power** interruption, or which may result in a momentary **power** interruption when it is switched into service, whether manually or automatically.

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